IN THE HIGH COURT OF BOMBAY AT GOA
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SECOND APPEAL NO. 18 OF 2003

1. Mr. Luis Gonzaga J.V.S.F. Sales alias Luis Gonzaga Sales, aged 71, married, retired, s/o Jose Olegario Sales and his wife

2. Mrs. Hermenigilda Catarina de Sona Dias alias Gilda Dias, aged 68, housewife, d/o Domingos Dias, both r/o H.No.70, Naikward, Velim, Salcete, Goa. ... Appellants.

Versus

1. Mr. Filipe Epifacio Pereira, aged 62, married, son of late Roque Pereira, and his wife,

2. Mrs. Piedade Pereira, aged 52, housewife, wife of Filipe Epifacio Pereira, d/o late Agostinho D'Costa, both r/o H.No.163, Goleacheband, Velim, Salcete, Goa. ... Respondents.

Shri S. G. Bhobe, advocate for the appellants.

Shri Shivan Dessai, advocate for respondent nos. 1 and 2.

CORAM : F. I. REBELLO, J.

DATE : 4th July, 2003.

ORAL ORDER

In a suit filed by appellants herein the trial Court allowed the same by granting all the reliefs as prayed for. The respondents herein preferred an appeal. The learned Appellate Court did not interfere insofar as the reliefs covered by prayer clauses (a), (b) and (c) (v) and (vi), as also (d) and (f), but allowed the appeal insofar as prayer

clauses c(i), c(ii), c(iii), c(iv) and c(vii), as also prayer clause (e). At the hearing of the appeal on behalf of the appellants it is contended that the lower court had considered the documentary as well as the oral evidence and has given findings. The Appellate Court has reversed the said findings without taking into consideration that there was documentary as well as oral evidence.

2. The judgments would indicate that the appellants in the course of their evidence had produced by way of photographs, evidence in support of the prayer clauses, which evidence was accepted by the trial Court. The learned Appellate Court held that that evidence at the highest would show the position as existing on the date the photographs were taken and it was not possible to decide from them whether the overhang structure existed earlier. On that basis, the said photographic evidence was not relied upon. The evidence of the appellants and their witnesses was thereafter examined as also that of the respondents. On examination of the evidence of the parties, the Appellate Court which was entitled to reappreciate the evidence, came to the conclusion that the appellants herein were unable to establish that the construction which was sought to be removed did not exist earlier. There has therefore been appreciation of evidence. Once that be the case, I find no reason for interference. At any rate, mere appreciation of evidence by itself, would not give rise to a substantial question of law.

In the light of that, no interference is called for. The Second Appeal is rejected.

f. I. REBELLO, J.

mc.